

**Remarks/Arguments:**

Claims 1-33 are presently pending. Applicants herein amend 1, 4, 5, 10, 14, 19, and 26-33. Support for the claim amendments can be found throughout the application as originally filed. For example, see paragraphs [0022] and [0055]. No new matter is added. Reconsideration is respectfully requested in view of the above amendments and the following remarks.

**Allowable Subject Matter**

Page 12 of the Office Action recites "Claims 5, 14 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims." Applicants appreciate the Examiner's recognition of allowable subject matter. Applicants herein amend claims 5 and 14 such that they are now in independent form including all of the limitations of their respective base claim and the intervening claims. Accordingly, applicants contend that claim 5 and 14 are now allowable. Applicants has not amended claim 30 but contend that claim 30 is allowable because, as discussed below, it ultimately depends from an allowable independent claim, i.e., claim 26.

**Claim Rejections Under 35 U.S.C. § 101**

Page 2 of the Office Action recites that "Claims 26-33 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter..." The Office Action further recites that "While 'functional descriptive material' may be claimed as a statutory product (i.e., a 'manufacture') when embodied on a tangible computer readable storage medium, a computer readable carrier embodying that same functional descriptive material is neither a process nor a product (i.e., a tangible 'thing')..." (Emphasis added) Applicants herein amend claims 26-33 such that they are directed to a "tangible computer readable medium." Accordingly, applicants contend that claims 26-33 are directed to statutory subject matter and respectfully request that the rejection of claims 26-33 under 35 U.S.C. § 101 be withdrawn.

**Claim Rejections Under 35 U.S.C. § 103**

Page 3 of the Office Action recites that "Claims 1-4, 10-13, 19-22, 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art (AAPA) in view of Testin et al., US Patent No 4,776,038." Applicants respectfully traverse the rejection. While not conceding the rejection, applicants herein amend independent claims 1, 10, 19, and 26 in order to expedite prosecution.

Claim 1 is directed to a method for use in a cable television receiver to switch from a non-module tuning mode to a module tuning mode. Claim 1, as amended, includes the following steps:

presenting a video program signal selected by a user while in the non-module tuning mode;

detecting a cable tuning module in the cable television receiver;

acquiring module tuning data responsive to the detection of the cable tuning module during presentation of the video program signal while in the non-module tuning mode; and

switching from the non-module tuning mode to the module tuning mode responsive to a measure of the acquired module tuning data.

This means that a video program signal selected by a user is presented while the cable television receiver is in the non-module tuning mode. Module tuning data is then acquired responsive to the detection of a cable tuning module during presentation of the video program signal. The cable television receiver is then switched from the non-module tuning mode to the module tuning mode responsive to a measure of the acquired module tuning data. This enables a cable television receiver to remain in the non-module tuning mode initially when channel selection in the module tuning mode may be inferior to channel selection in the non-module tuning mode while enabling a viewer to continue viewing channels. See paragraph [0055] of the application as originally filed.

The background section of applicants' application as originally filed and Testin fail to disclose, teach, or suggest at least the step of acquiring module tuning data responsive to the detection of the cable tuning module during presentation of the video program signal.

The background of the instant invention described a system in which, when a point of deployment module is detected, cable television receivers immediately enter the module tuning mode and begin collecting data for tuning basic programming and premium services. See paragraph [0006] of the instant invention. Thus, the background section of applicants' application fails to disclose, teach, or suggest acquiring module tuning data responsive to the detection of the cable tuning module during presentation of the video program signal while in the non-module tuning mode as set forth in claim 1.

Testin is directed to an automatic air/cable mode selection apparatus for a television tuner. Testin describes a system in which an apparatus is provided for automatically selecting the tuning mode of the tuner in accordance with the type of RF signal source provided. See column 1, lines 35-37 of Testin. In accordance with an aspect of Testin, an automatic tuning selection operation is provided during which the tuner is initially set to one of either the air or cable tuning modes and a search is conducted for active channels for which valid RF signals are present. If a predetermined number of active channels are located, the tuner continues to be set to the initial tuning mode. However, if the predetermined number of active channels are not located in the initial tuning mode, the tuner is set to the other tuning mode. See column 1, lines 38-47 of Testin. Testin, however, is devoid of acquiring module tuning data responsive to the detection of cable tuning module during presentation of the video program signal while in the non-module tuning mode.

As the background of applicants' specification and Testin are each entirely devoid of acquiring module tuning data responsive to the detection of cable tuning module during presentation of the video program signal while in the non-module tuning mode, applicants contend that applicants' specification in view of Testin fails to disclose, teach, or suggest at least one feature of claim 1. Accordingly, applicants contend that claim 1 is allowable over applicants' specification in view of Testin and respectfully request that the rejection of claim 1 be withdrawn.

Claims 10, 19, and 26, while not identical to claim 1, include features similar to the feature discussed above with respect to claim 1. Accordingly, applicants contend that these claims are allowable.

Claims 2, 3, 11-13, 20-22, and 27-29 each depend from one of claims 1, 10, 19, and 26 and, thus, are allowable for at least the reason their respective base claim is allowable. Accordingly, applicants respectfully request that the rejection of these claims be withdrawn.

Claim 4 has been rewritten in independent form to include all the features of claim 1 prior to amendment. Claim 4 recites "wherein the switching step comprises calculating a module quality factor based at least in part on a number of channels that may be tuned using the acquired module tuning data and elapsed time since the cable tuning module was detected." The background in applicants' specification and Testin are entirely devoid of calculating a module quality factor based at least in part on a number of channels that may be tuned using the acquired module tuning data and elapsed time since the cable tuning module was detected. Accordingly, applicants contend that claim 4 is allowable and respectfully request that the rejection of claim 4 be withdrawn.

Section 3 of the Office Action recites that "Claims 6-7, 15-16, 23 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art (AAPA) in view of Testin et al., US Patent No 4,776,038, and further in view of Yun, US Pub No 2001/0006404." Claims 6-7, 15-16, 23 and 31 each ultimately depend from one of claims 1, 10, 19, and 26. The feature that was found to be lacking in the background of applicants' specification and in Testin with reference to claim 1 is not found in Yun. Thus, Yun fails to make up for the deficiencies of the background of applicants' specification and Testin. Accordingly, applicants contend that claims 6-7, 15-16, 23, and 31 are allowable and, therefore, respectfully request withdrawal of the rejection.

Section 4 of the Office Action recites that "Claims 8-9, 17-18, 24-25, 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art (AAPA) in view of Testin et al., US Patent No 4,776,308 and further in view of Inui et al., Japanese Pub No JP 2002-344838 A." Claims 8-9, 17-18, 24-25, 32-33 each ultimately depend from one of claims 1, 10, 19, 26 and thus, include all of the limitations of their respective base claim. The feature that was found to be lacking in the background of applicants' specification and Testin with reference with the independent claims is not found in Inui. Thus, Inui fails to make up for the deficiencies of the background of applicants' specification in view of Testin. Accordingly, applicants contend that claims 8-9, 17-18, 24-25, and 32-33 are allowable and, therefore, respectfully request withdrawal of the rejection.

**Conclusion**

In view of the amendments and remarks set forth above, applicants respectfully submit that claims 1-33 are in condition for allowance and early notification to that effect is earnestly solicited.

Respectfully submitted,

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